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In the Supreme Court of United States

OCTOBER TERM, 1945

No. 1118

PAUL A. PORTER, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION
PETITIONER

v.

MARY JO DICKEN AND ELIZABETH M. DICKEN, B. N. MURRAY, EXECUTOR OF THE ESTATE OF EMMA GANG, DECEASED, JACOB E. SANDUSKY, SHERIFF

ANSWER TO PETITION FOR A WRIT OF CERTIORARI

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Respondents herein pray that the Petition for a Writ of Certiorari be denied for the reasons: (1) That the petitioner has a plain, adequate and complete remedy at law in the State Courts whose proceedings are attempted to be stayed by injunction in the Federal Courts, (2) That the petitioner seeks by injunction in the Federal Courts to restrain a judicial sale proceeding instituted under State Statutes, (3) That the proceedings sought to be enjoined are not within the purview of the Emergency Price Control Act pertaining to Rent Regulation for Housing, and (4) That said writ would bring about a collision between the Tribunals of the States and of the Union.

QUESTIONS PRESENTED

1. Whether the petitioner has a plain, adequate and complete remedy at law.

2. Whether the petitioner has a right by injunctive proceedings in a District Court to restrain a judicial sale ordered by a State Court.

3. Whether judicial sale proceedings to sell real estate having housing accomodations are within the purview of the Emergency Price Control Act of 1942 (56 Stat. 23, 50 U.S.C. App. Sec. 925 (a) et seq.) as amended, and Rent Regulation for Housing as amended (10 F.R. 3436) issued under that Act.

4. Whether Sec. 265 of the Judicial Code prohibits a District Court from issuing an injunction under Sec. 205 (a) of the Emergency Price Control Act to restrain the State Court, in a land sale proceedings, to issue a writ of Habere Facias Possessionem.

STATEMENT

It is a deliberate misstatement of fact to say that "the respondents Mary Jo Dicken and Elizabeth M. Dicken obtained ex parte from the Probate Court a writ of possession directing respondent Jacob E. Sandusky, as Sheriff of Franklin County, to evict the tenant and to place the purchasers in possession." No such proceedings were had. No eviction action was ever instituted in any Court by any of the repondents.

In 1942, prior to the conception and birth of the Rent Regulation for Housing Act, the respondent B. N. Murray, as Executor of the estate of Emma Gang, deceased, instituted proceedings in the Probate Court of Franklin County, Ohio, under favor of the Statute of Ohio known as General Code Section 10510-2, which provides as follows:

> *"As soon as an Executor or Administrator ascertains that the personal property in his hands is insufficient to pay all the debts of the deceased, together with the allowance to the widow and children for twelve months, and the costs of administering the estate, he shall commence a civil action in the Probate Court or the Court of Common Pleas for authority to sell the decedent's real estate."*

The respondent accordingly brought an action in the Probate Court of Franklin County, Ohio, to sell the real estate in question, being the only asset in the estate of said decedent and a full and complete proceeding was had in said Court until its halt by injunctive proceedings brought in this case. For some four years the tenant in possession knew that said premises had to be sold in order to pay real estate taxes, inheritance taxes and claims and debts of the estate and several times requested and obtained a stay of the proceedings in the Probate Court of Franklin County in order that he might purchase said premises, which he failed and neglected to do.

In its orders of sale, confirmation and distribution of

proceeds, said Probate Court included, among other directives, a writ of Habere Facias Possessionem in favor of the purchasers, the respondents Mary Jo Dicken and Elizabeth M. Dicken. No attempt was made by the petitioner's predecessor to vacate, stay or appeal said Order of the Probate Court of Franklin County, Ohio, in that Court or in any other State Court of Ohio, although all had concurrent jurisdiction with the Federal Courts in the enforcement of any regulation pertaining to the Rent Regulation for Housing Act. Instead, injunction proceedings were brought by the Office of Price Administration in the District Court, in the Circuit Court of Appeals, and recently in this Court.

REASONS FOR REFUSING THE WRIT

1. The proceedings sought to be enjoined by the petitioner were not contemplated in the Emergency Price Control Act for the reason that there is no provision in said Act by which any order of sale made or entered by a State or Federal Court held by a Marshal, a Sheriff, Constable, Bailiff or other judicial officer pursuant to applicable State or Federal law shall proceed to carry out such order of sale, nor by any order or regulation promulgated by the Administrator of the Office of Price Administration except perhaps by the order made effective December 1, 1945, by petitioner's predecessor, Chester Bowles, in "*Second Revised Supplementary Order Number 10. Judicial Sales*" (Set forth in Appendix, infra, page 8).

2. The petitioner seeks by injunctive process to do indirectly that which he may not do directly, viz., attempting to effect an appeal from the orders of the Probate Court of Franklin County, Ohio, by obtaining writs of injunction against the respondents who have been charged with the duty of carrying out the order of said Court.

3. Even in this passing and subsiding emergency, the Courts of the United States should not be called upon to circumvent Section 265 of the Judicial Code, (Title 28, Sec. 279 U.S.C.A.) which provides:

> *"The writ of injunction shall not be granted by and court of the United States to stay proceedings in any court of a state, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."*

And, as held by the District Court for the Southern District of Ohio, Eastern Division, in the unreported case of *Bowles* vs. *Rugg*, 913 Civil, following the authority of *Douglas* vs. *Jeannette*, 319 U.S. 157:

> *'Questions of law are not to be haphazardly withdrawn from State Courts by Federal Courts even where the most sacred of the constitutional freedoms is concerned.'*

And, following those decisions in the instant case:

> *"Concededly, emergency legislation presents new problems of enforcement, and perhaps decisions must at times be revised to take cognizance of the state of emergency, but it must also be remembered that the two judicial systems must continue to*

reside together in peace and amity long after any given emergency is past; in fact, as long as our present system of government endures."

4. A Federal Court should not control the judicial acts of a State Court by injunctive processes where there is concurrent jurisdiction and a Federal Statute is involved.

Petitioner's predecessor in office, Chester Bowles, in explaining his *Second Revised Supplementary Order Number 10. Judicial Sales,* made effective December 1, 1945, reasons thus:

"With the end of hostilities and the prospect of return to peace and production of most commodities within the predictable future, it is not deemed necessary to longer continue these limited controls over judicial sales.

Judicial sales are not in the aggregate significant in the economy and the retention of even limited controls with respect to such transaction presents difficulties in administration disproportionate both to the effectiveness of the controls and to any contribution which they make to the stabilization program. Judicial sales being non-recurrent in nature have presented the necessity for an unusually large volume of individual interpretations with respect to minor transactions and have further presented Courts and their officers with difficult questions of determination which changed conditions seem no longer to require."

Furthermore, judicial sales are not common and everyday occurrences even in the busiest Courts of the state, espe-

cially in times of the country's prosperity, and therefore should not be considered parallel or akin to the usual forcible detainer or eviction cases which the most remote and inferior Courts of the land have jurisdiction to entertain.

CONCLUSION

The petitioner has adequate relief at law in the State Courts to modify, vacate, stay or appeal the order of an inferior Court by supersedeas, or otherwise, when the decision of such Court is in conflict with the Federal Statute wherein the State Court is given concurrent jurisdiction with the Federal Court. The granting of injunctive relief to the petitioner in the instant case would bring about a conflict between the Federal and State Tribunals. The proceedings brought by the petitioner and his predecessor virtually amount to an appeal from a judgment of an inferior State Court. No violation of the Emergency Price Control Act by the respondents or the State Court has been shown by the petitioner. The issuance of injunctions and the writ sought or prayed for would be an interference with the proceedings of a Court of a state within the prohibition of Section 265 of the Judicial Code. For the foregoing reasons the petition for a writ or certiorari should be denied.

Respectfully submitted.
B. N. MURRAY,
for all Respondents.

April 25, 1916.

APPENDIX ONE

JOURNAL ENTRY CONFIRMING SALE, ETC.

This day this cause came on to be heard on the report of B. N. Murray, Executor of the above-entitled estate, of his proceedings under the former order of this Court, and upon the motion of said petitioner to confirm the sale made in obedience to said order; the Court having carefully examined said report, and finding the proceedings of said petitioner in all respects correct, and being satisfied that said sale was fairly and legally made, it is ordered that the same be and hereby is approved and confirmed.

It is further ordered that said petitioner execute a deed of all the right, title and interest of the said decedent and said Executor in said real estate, to the purchasers, Mary Jo Dicken and Elizabeth M. Dicken, upon said purchasers paying the sum of $5500.00 in cash; and a writ of possession is hereby awarded to the said purchasers, Mary Jo Dicken and Elizabeth M. Dicken for possession of said premises which are known by street number 633 S. Ohio Avenue, Columbus 5, Ohio.

It is further ordered that said Executor, out of the money in his hands, pay: . . .

It is further ordered that the balance of said proceeds be accounted for by said Executor according to law and that he pay the costs of these proceedings.

C. P. McCLELLAND, *Probate Judge.*

APPENDIX TWO

"SECOND REVISED SUPPLEMENTARY ORDER No. 10 JUDICIAL SALES

1. Judicial Sales excluded from operations of price schedules and maximum price regulations, except as specified. Except as provided in section 2 hereof, no provisions of any price schedule, maximum price regulation or any other pricing order issued by any office of the Office of Price Administration shall be deemed to apply to any sale, at auction or otherwise, (a) held pursuant to the provisions of any order of sale made or entered by a State or Federal court, (b) held by a sheriff, constable, bailiff, marshal or other judicial officer pursuant to applicable State of Federal law, or (c) held by a duly qualified executor or administrator, guardian or other legal representative in liquidating the assets of a decedent, minor or incompetent pursuant to applicable State law.

2. Sales in course of trade. . . . . .

3. Definitions. . . . . .

This supplementary order shall become effective the 1st day of December, 1945.

CHESTER BOWLES,
Administrator."